

REMARKS

Favorable consideration and allowance of the present application are respectfully requested in view of the foregoing amendments and the following remarks.

Currently, claims 17, 19-26, 31-34, and 36-50 are pending in the present application including independent claims 17, 40, and 46. Claims 20, 22, 32, 33, 38, and 43 have been withdrawn from consideration.

Independent claims 17, 40, and 46, for instance, require at least one undulation of substantially liquid impermeable resilient material located between the backsheet and the topsheet ***in a target area above the absorbent body***.

In the Office Action, claims 40-42 and 44-50 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,545,156 to DiPalma, et al. Applicant's respectfully submit, however that claims 40-42 and 44-50 are not anticipated by DiPalma, et al.

DiPalma, et al. describes a sanitary napkin for absorbing menstrual fluid. The sanitary napkin of DiPalma, et al. includes "a body-facing liquid-permeable cover 202, a garment-facing, liquid-impermeable preformed member 204, and an absorbent core 206 positioned between the cover 202 and the preformed member 204." Col. 9, lines 37-41. The preformed member 204 includes a bulge 210. Col. 9, lines 41-42.

In this regard, FIG. 6 of DiPalma, et al. (reproduced below) is instructive:

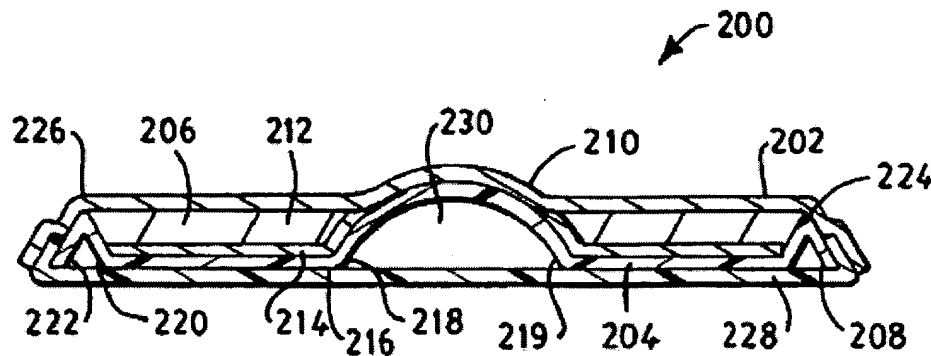


FIG. 6

As illustrated in FIG. 6 of DiPalma, et al., the absorbent core 206 is positioned **between** the cover 202 and the preformed member 204 that includes bulge 210. Accordingly, bulge 210 is not **above** the absorbent core 206. By contrast, the presently pending claims all require at least one undulation of substantially liquid repellent resilient material located between a backsheet and a topsheet in a target area **above** the absorbent body.

The claim language interpretation section of the Office Action defines above as "in or to a higher place" and states that "such claim language terminology does not require positioning directly above." However, the presently pending claims also require that the undulation of resilient material have an elevation **above the absorbent body**. If the claims were interpreted as indicated in the Office Action, the limitation "above the absorbent body" would have the same meaning as the limitation "an elevation above the absorbent body" and would be a limitation without consequence.

During examination, the claims must be given their ordinary and customary meaning to a person of ordinary skill in the art consistent with the

specification. In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor. See M.P.E.P. § 2111.01, II. If extrinsic reference sources, such as dictionaries, evidence more than one definition for the term, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant's use of the terms. Id.

Although the Office Action defines above as “in or to a higher place”, such a definition is contrary to the claims and specification of the present application which require at least one undulation of substantially liquid impermeable resilient material located between the backsheet and the topsheet ***in a target area above the absorbent body***. The ordinary and customary meaning of the term above in the context of the presently pending claims would require the undulation of resilient material to be positioned over the absorbent body. In other words, the absorbent body underlies the undulation. This is further confirmed by the additional limitation that the undulation of resilient material have “an elevation above the absorbent body”. Such a definition is most consistent with Applicant’s use of the word above in the claims and specification. An alternative definition would be too restrictive and inconsistent with the inventors’ intent. Therefore, the present claims patentably define over DiPalma, et al.

Claims 17, 19, 21, 23, 26, 31, 34, 36-37, 39-42, and 44-50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sauer ‘336 (U.S. Patent

No. 6,017,336) in view of Sauer '300 (U.S. Patent No. 5,527,300) and Grykiewicz (U.S. Patent No. 5,575,785). Claims 24-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sauer '336 (U.S. Patent No. 6,017,336), Sauer '300 (U.S. Patent No. 5,527,300) and Grykiewicz (U.S. Patent No. 5,575,785) as applied to claim 23, and further in view of Odorzynski et al. (U.S. Patent No. 5,879,341).

Applicants respectfully submit that claims 17, 40 and 46 are not rendered obvious by Sauer '336 in view of Sauer '300 and further in view of Grykiewicz.

Sauer '336 teaches away from the amended claims 17, 40, and 46 and thus could not be combined with the other references to render these claims obvious. Sauer '336 discloses a diaper having compressible containment barriers 60 along lateral edges 28 of the intermediate section. The primary purpose of the containment barriers 60 is to prevent the lateral flow of fecal exudates and to create a void above the absorbent body in the intermediate section and/or the "target zone." The undulated containment barriers are oriented sideways to direct the fecal exudates to, and contain the exudates in, the intermediate section and/or the target zone (See, Col. 8, line 66 - Col. 9, line 20). Therefore, by teaching to dispose the barriers on the lateral edges of the diaper to direct and contain the fecal exudates in the intermediate section and/or target zone, Sauer '336 teaches away from having an undulation of resilient material in the target area, as called for in claims 17 and 40, and an undulation of resilient material that directs fluid away from the intermediate section, as called for in claim 46.

Further, based on claims 17, 40, and 46 as amended, the combination or modification of the references would render the primary reference, Sauer '336, inoperable for its intended purpose. MPEP §2143.01 states:

If [the] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

The suggested combination or modification would render the primary reference inoperable for its intended purpose. Thus, the rejection is unsupported by the art and should be withdrawn.

As stated above, Sauer '336 discloses a diaper having containment barriers 60 along lateral edges 28 with the primary purpose being to prevent the lateral flow of fecal exudates by directing the exudates toward and containing it in the intermediate section of the diaper and/or within its target zone. Sauer '300 discloses an absorbent article that includes a surge material 46 in the middle of its intermediate section. This surge material 46 includes contractible members that impart a corrugated appearance with regular or irregular "hills and valleys" to the surge material. Changing the position of the containment barriers 60 from the lateral edges of the diaper as called for in Sauer '336 to the position of the middle of the intermediate section of the absorbent article as called for in Sauer '300 would not prevent the lateral flow of exudates, which is the specific intent of the containment barriers 60. Thus, the intended purpose of Sauer '336 would be destroyed.

For at least the reasons above, Applicants respectfully submit that the independent claims 17, 40, and 46 are patentably distinguishable over any combination of the art of record utilizing Sauer '336 as the primary reference. Thus, Applicants

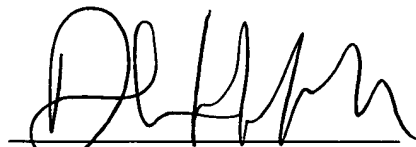
respectfully submit that claims 17, 40, and 46 are allowable. Claims 19-26, 31-34, and 36-39 only further patentably distinguish the unique combination of claim 17 and thus are allowable over the prior art for at least the reasons claims 17 is allowable. Further, claims 41-45 further define the combination of elements set forth in claim 40 and are allowable for at least the reasons claim 40 is allowable. Likewise, claims 47-50 only further patentably distinguish the unique combination set forth in claim 46 and are allowable for at least the reasons claim 46 is allowable.

For at least the reasons discussed above, Applicant respectfully submits that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Should any issues remain after consideration of this amendment, then Examiner Reichle is invited and encouraged to telephone the undersigned at his convenience.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Alan R. Marshall', written over a horizontal line.

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